

NEIL ABERCROMBIE
GOVERNOR



CATHERINE PAYNE
CHAIRPERSON

STATE OF HAWAII
STATE PUBLIC CHARTER SCHOOL COMMISSION
(‘AHA KULA HO‘ĀMANA)
1111 Bishop Street, Suite 516, Honolulu, Hawaii 96813
Tel: 586-3775 Fax: 586-3776

RECOMMENDATION SUBMITTAL

DATE: April 10, 2014

TO: Catherine Payne, Chairperson

FROM: Tom Hutton, Executive Director

AGENDA ITEM: Action on Amendments to the Commission Bylaws Relating to Public Testimony and the Promulgation of Commission Meeting Agendas

I. DESCRIPTION

Recommendation that the Commission amend its bylaws to clarify its policies relating to the administration of public testimony and the promulgation of Commission meeting agendas and direct staff to develop procedures to implement the policies.

II. AUTHORITY

Establishment of the Commission: Hawaii Revised Statutes (“HRS”) Section 302D-3 creates a state public charter school commission with statewide chartering jurisdiction and authority.

Public Testimony: Section 92-3, HRS, states, “[All] boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule.”

Public Testimony: Subsection 8-501-4(b) of the pending draft the Commission’s Hawaii Administrative Rules (“HAR”) states, “The commission shall afford all interested persons an opportunity to submit data, views, arguments or present oral testimony on any agenda item in an open meeting.”

Oral Testimony: Subsection 8-501-4(c) of the pending draft of the Commission’s HAR states, “The commission may reasonably administer oral testimony so as to limit testimony of excessive duration

or limit or prohibit any redundant, immaterial, impertinent, or scandalous testimony or to limit the amount of time for testimony per individual or per issue.”

Delegation of Duties: Pursuant to HRS §302D-5(c), “[a]n authorizer may delegate its duties to officers, employees, and contractors.”

III. BACKGROUND

On July 12, 2012, the Commission adopted its bylaws and on August 8, 2013, the Commission revised these same bylaws.

Recent events have revealed the need for clarifying the Commission’s policies and procedures relating to public meetings. At its October 17, 2013 meeting, the Commission adopted a segmented approach to oral public testimony. However, questions still arise surrounding the administration of public testimony and the promulgation of Commission agendas that the Commission’s bylaws or other policy currently do not address.

Oral Testimony. At the Commission’s public hearing for new charter school applications on March 13, 2014, a couple of issues became apparent. First, a number of testifiers asked if they could yield their two minutes of oral testimony to another testifier to increase the length of time that the testifier would have for oral testimony. In the absence of any policy, the Chairperson allowed the yielding of testimony time. After the hearing, several individual Commissioners raised questions with staff about whether allowing this in the future was a good idea. Second, some testifiers asked staff if they could set up a video presentation for the Commission. Without a policy, and not wanting to interrupt the hearing, staff instead suggested that they could hold their laptop up and play the audio into the microphone as their oral testimony.

Written Testimony. Further, staff has found that the current deadline for written testimony of noon the day before a Commission meeting does not provide adequate time for staff to compile packets for Commissioners that include the on-time written testimony. Staff set this late deadline to allow for more time for the public to provide input to the Commission. However, staff now realizes it needs to balance providing reasonable time to the public to submit written testimony with the need for time to prepare written testimony for Commission meetings. In addition, some testifiers have attempted to distribute late written materials at Commission meetings. Not only is this disruptive, but not all Commissioners are guaranteed to receive a copy of the material in such instances.

Agenda Procedures. Lastly, occasionally members of the public have requested to place items on the Commission’s agenda. There is no formal process for doing so, and instead the current practice is that the Executive Director consults with Chairperson when drafting meeting agendas.

IV. DECISION MAKING STATEMENT

Staff recommends that the Commission amend its bylaws to set policies that address the issues described above. Staff has identified sections to amend.

Oral testimony. First, staff recommends that testifiers not be allowed to yield time to other testifiers. The purpose of an oral testimony time limit is to encourage conciseness, to allow enough time for everyone to testify, and to give the Commission sufficient time to deliberate. If the Commission feels a particular member of the public is deserving of more time to testify, the Chairperson already has the discretion to allot such individual more time and has exercised this discretion.

Second, staff recommends that generally only oral and written testimony be accepted, except under extenuating circumstances and with advance approval and arrangements. This would avoid potential meeting disruption and delay (if things like media and other technology have to be set up) while still providing the public reasonable means of expressing data, views, and opinions. Also, as is already practice, staff recommends that the Commission's bylaws indicate that the Commission may offer remote testimony options as a courtesy and at its discretion.

Therefore, staff recommends that Article VII, Section 7.2 of the Commission's bylaws be amended as follows:

“Section 7.2 Public Testimony. All interested persons shall be provided an opportunity to present testimony on any agenda item. Except under extenuating circumstances, as determined by the Chairperson, preferably in advance of the meeting, interested persons may only present testimony orally or through written comments. An individual or representative wishing to testify orally should register prior to the meeting. Testimony must be related to an item that is on the agenda and such person shall be required to identify the agenda item to be addressed by the testimony. Each individual or representative of an organization is allotted two minutes, or an amount of time otherwise designated by the Chairperson, to provide testimony to the Commission. The allotted time for testimony may not be yielded, designated, or otherwise transferred to another person. The Commission may offer options for interested persons to present oral testimony remotely as a courtesy and at the Chairperson's discretion. Written comments are strongly encouraged.”

Written testimony. While staff currently sets the existing written testimony deadline, staff recommends that a revised deadline be formally adopted by the Commission and memorialized within its bylaws. The current deadline usually leaves staff with less than 24 hours to prepare written testimony and does not account for holidays. Staff recommends that the Commission set a new deadline for written testimony at two business days prior to a Commission meeting, which provides reasonable time to the public to submit written testimony and to staff to include written testimony in the Commissioners' meeting packets.

Further, staff recommends that any written testimony submitted after the deadline be distributed to Commissioners after the meeting and that the distribution of written materials be prohibited during the meeting, except under extenuating circumstances and at the discretion of the

Chairperson, to avoid disrupting the meeting and ensuring all Commissioners receive the same material.

Therefore, staff recommends that Article VII, Section 7.1 of the Commission's bylaws be amended as follows:

"Section 7.1 Submission of Data, Views, or Arguments. Any interested person may submit data, views, or arguments in writing to the Commission on any agenda item. Written submittals shall be considered by members before taking action on any agenda item, provided that written submittals are submitted to the Commission no later than two business days prior to the respective meeting. Written submittals submitted after the deadline will be distributed to members after the respective meeting. No written materials may be distributed to members during any Commission meeting except under extenuating circumstances and at the discretion of the Chairperson."

Meeting agendas. The current practice with Commission meeting agendas is that the Executive Director promulgates the agenda in consultation with the Chairperson and other members as necessary. Staff recommends that this practice be memorialized in the Commission's bylaws.

Therefore, staff recommends that Article VI, Section 6.4 of the Commission's bylaws be amended as follows:

"Section 6.4 Meeting Agenda. The General Business Meeting agenda shall be promulgated by the Commission Executive Director in consultation with the Chairperson and with input, as necessary, from the Committee Chairpersons and members."

Procedures. Staff recommends that the Commission direct staff to develop procedures to implement the aforementioned policies memorialized in the Commission's bylaws as well as incorporate the public testimony approach the Commission adopted at its October 17, 2013 meeting. These procedures would not need the approval of the Commission. Sample procedures for purposes of illustration are attached as Exhibit A.

V. RECOMMENDATION

Motion to the Commission:

"Moved to amend the State Public Charter School Commission bylaws, as described in this submittal (dated April 10, 2014), to clarify the policies relating to the administration of public testimony and the promulgation of meeting agendas. The Commission directs staff to develop procedures to implement these policies."

Exhibit A

Sample Commission Meeting Procedures

State Public Charter School Commission

PROCEDURE: Commission Meeting Procedures

Adopted:

Effective Date:

Revised:

OVERVIEW: These procedures outline the processes for the public to submit written or oral testimony to the State Public Charter School Commission ("Commission") or request that a topic be considered as an agenda item on a future Commission agenda. The term "business day" as used herein shall mean a government agency business day, excluding Saturdays, Sundays and Hawaii state holidays, as designated in §8-1, Hawaii Revised Statutes.

PROCEDURE DETAILS:

1. Written Testimony. Any interested person may submit data, views, or arguments in writing to the Commission on any agenda item of a Commission meeting. Written testimony must relate to the agenda item on which he or she intends to provide written testimony. Written testimony is strongly encouraged and can be provided in addition to oral testimony.
 - A. Information and Submission. Written testimony must clearly identify the agenda item being addressed. Including the name of the individual or organization submitting the testimony is advised but not required. Written testimony must be:
 1. Emailed as a plain-text or HTML email or as a file attachment in .doc, .docx, or .pdf format, provided that the email does not exceed 30 megabytes, to commission.mail@spcsc.hawaii.gov; or
 2. Mailed or hand delivered as hard copies to 1111 Bishop Street, Suite 516, Honolulu, Hawaii, 98613.
 - B. Deadline. Written testimony must be received by the Commission no later than two business days prior the meeting in which the agenda item the testimony addresses is scheduled.
 - C. Late Testimony. Written testimony that is received by the Commission after the deadline has passed will be considered late testimony. Late testimony will be distributed to Commissioners after the meeting.

- D. Distribution to Members. Commissioners receive electronic copies of timely written testimony prior to the meeting. Hard copies of timely written testimony are included in Commissioners' meeting packets. Late testimony is delivered to Commissioners after the meeting and will not be distributed during the meeting except under extenuating circumstances, as determined by the Chairperson with advice from the Executive Director.
2. Oral Testimony. Any interested person may present oral testimony to the Commission on any agenda item of a Commission meeting. Oral testimony must be related to the agenda item on which he or she intends to provide oral testimony. Written testimony is strongly encouraged and can be provided in addition to oral testimony.
- A. Registering. Any person wishing to present oral testimony must register by writing his or her name, the name of the organization name that he or she represents (if applicable), and his or her position with the organization on the sign-up sheet for the respective agenda item he or she would like to testify.
- B. Time Limit. Each person is allotted two (2) minutes to present oral testimony to the Commission per agenda item on which he or she is providing oral testimony. The Chairperson has the discretion to allot more time to any person.
- C. Medium. The use of media, such as audio or video recordings, is not allowed, and testimony must be presented orally, except:
1. In instances where the person wishing to testify has a temporary or permanent disability that necessitates the use of media in order to provide testimony; and
 2. Other extenuating circumstances, as determined by the Chairperson with advice from the Executive Director.
- No additional setup or preparation time is allotted to persons using media under the aforementioned exceptions, nor will staff assistance be available.
- D. Remote Testimony. The Commission may offer options to interested persons to provide oral testimony remotely, if available. Any person interested in presenting oral testimony remotely must submit a request to the Commission at least three (3) business days prior to the meeting by emailing commission.mail@spcsc.hawaii.gov or calling (808) 586-3775. Remote oral testimony options are not guaranteed and are offered as a courtesy when available.

- E. Sequence. The Commission facilitates oral testimony through a segmented approach in order to optimize the public's time and streamline Commission meetings by dividing each agenda item into three phases: presentation, testimony, and deliberation.
1. Presentation. Commission staff, a committee chairperson or vice chairperson, or occasionally another party presents an update or background information, decision-making rationale, and, if applicable, a recommended motion on the agenda item.
 2. Testimony. After the presentation phase, the Chairperson invites members of the public to present oral testimony on the agenda item.
 3. Deliberation. The Commission discusses the matter, may question presenters and testifiers, and may take action, if appropriate.
3. Commission Meeting Agendas. Commission meeting agendas are promulgated by the Executive Director in consultation with the Chairperson and with input, as necessary, from Commissioners. Members of the public may request that an issue be considered as an agenda item, provided that requests are submitted to the Executive Director at commission.mail@spcsc.hawaii.gov and include the following:
- A. The name of the person or organization submitting the request;
 - B. A description of the issue that the request is concerning, including:
 1. Background information;
 2. An explanation how the issue affects charter school system management or policy or relates to charter school authorizing, generally; and
 3. Any Commission policy or rule that may need to be established or amended to address the issue; and
 - C. An approximate timeframe of when the issue should be addressed.

The Executive Director will consult with the Chairperson and make a determination of whether an agenda item addressing the issue will be included on a future meeting agenda. School-level issues will be treated as school complaints and will be remanded to the appropriate charter school governing board.